

R156. Commerce, Occupational and Professional Licensing.

R156-38b. State Construction Registry Rules.

R156-38b-101. Title.

These rules are known as the "State Construction Registry Rules."

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or these rules:

- (1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.
- (2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.
- (3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.
- (4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).
- (5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Section 38-1-30(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

- (1) establishing rules to implement the SCR;
- (2) providing oversight of the design, operation, and maintenance of the SCR; and
- (3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsection 38-1-30(3)(b), the duties, functions, and responsibilities of the designated agent include:

- (1) designing, developing, hosting, operating, and maintaining the SCR;
- (2) providing training, marketing, and technical support for the SCR;
- (3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and
- (4) obtaining and maintaining insurance coverage as follows:
 - (a) general liability insurance as required by Subsection 38-1-35(2)(b), which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and
 - (b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of \$5 Million.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

- (1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.
- (2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.
- (3) Security. The designated agent shall take commercially reasonable steps to

provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the SCR and be assigned a unique user ID and password to gain access to the SCR. The information gathered in the registration process shall be maintained in the SCR as the user profile. The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering;

(b) entity name if the individual represents an entity, and any DBA name(s);

(c) individual's position or title if the individual represents an entity;

(d) mailing address;

(e) phone number;

(f) email address, if any;

(g) preferred method of submitting payment to the SCR, as defined in a pre-populated pick list.

(2) The SCR shall provide the ability for a user to view and modify the user's profile.

(3) The SCR shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(4) The SCR shall pre-populate filings with any information available in the user's profile.

(5) The account will not be effective until the fee, established by the Division in collaboration with the designated agent, is received.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction trail of completed transactions by registered user.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project or original contractor may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(b) The parties identified in R156-38b-501(3)(a) may authorize a third party to file a notice of commencement on its behalf, as established in Subsection 38-1-27(9).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed, amended or corrected a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful duplicate notice of commencement filing with a different description of the project.

R156-38b-502. Preliminary Notices.

(1) A person who wishes to file a preliminary notice may authorize a third party to file the notice on the person's behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Preliminary Notice shall be in accordance with Subsection 38-1-32(1)(d).

(3) Methodology.

(a) Electronic preliminary notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a preliminary notice. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for the accuracy, suitability or coherence of the data.

(b) Alternate method preliminary notice filings shall be in accordance with Section R156-38b-505.

(c) Preliminary notice filing submitted before notice of commencement filing.

(i) A preliminary notice for a project may not be filed until the project has an existing notice of commencement. A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed may either:

(A) file the notice of commencement as an interested party to enable the filing of the preliminary notice; or

(B) wait for the notice of commencement to be filed by someone else to enable the filing of his or her preliminary notice.

(i) A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed and who can identify the project, using the building permit number or other identifier adopted by the Division in collaboration with the designated

agent, may request notification of the filing of a notice of commencement for the project.

(ii) A preliminary notice filing that is not accepted by the SCR because it is submitted before a notice of commencement has been filed shall be in accordance with Section R156-38b-507.

R156-38b-503. Notices of Completion.

(1) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-33(1)(a)(i), the owner, original contractor, lender, title company or surety associated with the construction project may file a notice of completion.

(b) The parties identified in R156-38b-503(1)(a)(i) may authorize a third party to file the notice on its behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Notice of Completion shall be in accordance with Section 38-1-33(1)(d).

(3) Methodology.

(a) Electronic notice of completion filings shall be input into the SCR input screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of completion. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for validating the accuracy, suitability or coherence of the data.

(b) Alternate method notice of completion filings shall be in accordance with Section R156-38b-505.

R156-38b-504. Required Notifications and Requests for Notifications.

(1) Required Notifications. The designated agent or the SCR shall send the following required notifications:

(a) notification of the filing of a notice of commencement to a person who has filed a notice of commencement for the project, as required by Subsection 38-1-31(4)(a);

(b) notification of the filing of a preliminary notice to the person who filed the preliminary notice, as required by Subsection 38-1-32(2)(a)(i);

(c) notification of the filing of a preliminary notice to each person who filed a notice of commencement for the project, as required by Subsection 38-1-32(2)(a)(ii);

(d) notification of the filing of a notice of completion to each person who filed a notice of commencement for the project, as required by Subsection 38-1-33(1)(d)(i)(A); and

(e) notification of the filing of a notice of completion to each person who filed a preliminary notice for the project, as required by Subsection 38-1-33(d)(d)(i)(B).

(2) Permissible Requests for Notifications. The following requests for notifications may be submitted to the SCR:

(a) requests by any interested person who requests notification of the filing of a notice of commencement for a project, as permitted by Subsection 38-1-31(4)(b);

(b) requests by any interested person who requests notification of the filing of a preliminary notice, as permitted by Subsection 38-1-32(2)(a)(iii); and

(c) requests by any interested person who requests notification of the filing of a notice of completion, as permitted by Subsection 38-1-33(1)(d)(i)(C).

(3) Content Requirements for Requests for Notification. The content of a request for notification shall include:

(i) identification of the project by a method designated by the Division in collaboration with the designated agent;

(ii) name of the requestor;

(iii) the filing for which notification is requested; and

(iv) an electronic or alternate method address or telefax number for a response.

(4) Methodology.

(a) Automatic Response System. The SCR shall, to the extent practicable, be designed to require or generate the necessary information to support an automatic response system and documentation of automatic response system in order to handle requests for and required sending of notifications.

(b) Necessary Information. The information to be required from filers or

generated to enable an automatic response system and documentation of response system shall include:

- (i) the date requests for notification were accepted;
- (ii) the method by which requests for notification are to be sent;
- (iii) unique identification of the construction project;
- (iv) the date a notification is sent in response to a requests for notification;

and

(v) the mailing address, electronic mail address, or telefax number used to respond to a request for notification.

(c) Electronic Requests. Electronic requests shall be responded to electronically unless directed otherwise by the person filing the request.

(d) Alternate Method or Process Requests. Alternate method requests shall be responded to in the method requested by the requestor.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or these rules.

(3) Format Requirements. Alternate method filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) The designated agent shall meet or exceed the following data entry standards for alternate filings:

(i) a primary operator shall manually input information required by Subsection 38-1-31(2)(a);

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate filing; and

(v) these standards are to be met prior to Internet publication.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate method filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the SCR.

(1) A filing that is not accepted by the SCR shall not be considered to be filed.

(2) The SCR shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The SCR shall allow the person making the electronic filing attempt to correct the defect or defects, if possible.

(3) The designated agent shall notify a person whose alternate method filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate process that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the SCR shall maintain a record of all processing fees received with filings submitted by alternate process that are not accepted.

R156-38b-508. Correction of Filings.

(1) A person who submits a filing may submit a correction of the filing electronically or by alternate filing.

(2) A correction of filing shall not require a new fee payment unless submitted by alternate process or by a method of electronic process that requires manual input by the designated agent.

(3) A correction of filing shall not affect the date of filing for the filing being corrected. The date of filing for the correction of filing shall be as specified in Section R156-38b-506.

(4) Notification of the correction of filing shall be provided to the same persons as required for the filing being corrected.

R156-38b-509. Cancellation of Filings.

(1) In accordance with Subsections 38-1-32(3) and 38-1-33(2), the SCR shall, upon request of a person who filed an accepted preliminary notice or notice of completion, allow:

(i) a person who completed a filing who electronically requests cancellation of the filing to designate the filing as canceled; and

(ii) a person who completed a filing who by alternate process requests cancellation of the filing to have the filing placed in a canceled by the designated agent.

(2) Notification of the cancellation of a filing shall be provided to the same persons as required for the original successful filing.

(3) A canceled filing shall indicate that the filing is no longer given effect.

(4) A canceled filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1-32 or 38-1-33.

R156-38b-510. Data Contained in the SCR.

The SCR is intended as a public repository of the information contained in the filings required or permitted by law. The SCR has the responsibility to post but not validate the accuracy, suitability or coherence of the information received in filings included within the SCR.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the

designated agent. For alternate method filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(i) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(ii) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1-27(2)(g), the SCR shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the SCR;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) It shall be the responsibility of the person making an electronic filing to print out a transaction receipt, if the person wishes a hard copy of the receipt.

(3) The designated agent shall send a transaction receipt to a person who submits a filing by alternate method that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall be responsible for keeping accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall be responsible for conducting or contracting for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-701. Indexing of State Construction Registry.

The SCR shall be indexed in accordance with Subsection 38-1-27(3)(b).

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1-30(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1-30(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is canceled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsections 38-1-27(2) and (3), and 38-1-30(3), construction

projects in the SCR shall be accessible to an interested person who has registered with the SCR and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion

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Authorizing, and Implemented or Interpreted Law: 38-1-30(3)

**STATE CONSTRUCTION
REGISTRY RULES**

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